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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/978,273	10/15/2001	Chrisotphcr John Robert Thomas	13101/48801	4447

7590 06/14/2006  
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EXAMINER

COLLINS, CYNTHIA E

ART UNIT PAPER NUMBER

1638

DATE MAILED: 06/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/978,273

Applicant(s)

THOMAS ET AL.

Examiner

Cynthia Collins

Art Unit

1638

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 26 May 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

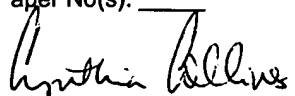
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 55-66.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

  
Cynthia Collins  
Primary Examiner  
Art Unit: 1638

Continuation of 3. NOTE: the proposed amendment(s) raise new issues with respect to whether claim 56 further limits claim 55 as amended.

Continuation of 5. Applicant's reply has overcome the following rejection(s): Applicant's proposed amendments would, if entered, overcome the rejection of claims 55 and 58-66 under 35 USC 102(b).

Continuation of 11. does NOT place the application in condition for allowance because:

The request for reconsideration has been considered but does not place the application in condition for allowance because Claims 55 and 58-66 are anticipated by Maddaloni et al. (Transgenic Research, 1997, Vol. 6, No. 6, pages 393-402), as the proposed claim amendments were not entered. However, Applicant's proposed amendments would, if entered, overcome the rejection of claims 55 and 58-66 under 35 USC 102(b) as being anticipated by Maddaloni et al.

The request for reconsideration has been considered but does not place the application in condition for allowance because Claims 56-57 are unpatentable over Maddaloni et al. (Transgenic Research, 1997, Vol. 6, No. 6, pages 393-402) in view of Hey et al. (Plant Physiology, 1995, Vol. 107, pages 1323-1332) and Boston et al. (US 5,332,808 issued July 26, 1994, Applicant's IDS). Applicant's assertion that Maddaloni et al. fail to teach a nucleic acid molecule encoding a mature maize ribosome inactivating protein comprising an alpha domain and a beta domain arranged contiguously is unpersuasive, as Hey et al. was cited for teaching this claim limitation. Applicant's assertion that Maddaloni et al. fail to teach transforming a plant with a chimeric construct to cause plant cell cytotoxicity at a target site and the induction of expression at and/or adjacent to a target site is unpersuasive, as Maddaloni et al. teach the selective expression of a ribosome inactivating protein to a specific location within the plant body, i.e., a wounding target site (pages 394-395; page 396 Figure 1; page 397 Figure 3). While Maddaloni et al. are silent with respect to the induction of plant cell cytotoxicity at that location, Maddaloni et al. need not explicitly teach this limitation in order to anticipate or render obvious the rejected claims, as the induction of plant cell cytotoxicity at that location is the inherent result of practicing the claimed method. Applicant's assertion that Boston et al. fails to teach plant cell cytotoxicity or transforming a plant with a chimeric construct to cause plant cell cytotoxicity at a target site and the induction of expression at and/or adjacent to a target site is unpersuasive, as Boston et al. was cited for teaching the use of a nos terminator in a plant expression construct. Applicant's assertion that Hey et al. teaches away from the claimed invention is unpersuasive, as while Hey et al. was unable to recover transgenic solanaceous tobacco plants using constitutive expression of a nucleic acid molecule encoding a mature maize ribosome inactivating protein comprising an alpha domain and a beta domain arranged contiguously, the claimed invention only requires inducible expression in a transgenic solanaceous plant..